restricted delivery waives this condition unless a contrary intention appears. See *In re Perpall* (C. C. A. 1919) 256 Fed. 758, 760; *People* v. *Mills Sing* (Cal. 1919) 183 Pac. 865, 867. But here no such "contrary intention" appears. Since the parties agreed upon the price per pound and the number of bales, the mistake in payment was merely in the performance of the contract. Therefore, title passed on the delivery of the goods and the receipt of the draft. The *dictum* of the court that the appropriate remedy was contract is sound. Where the vendor through a mistake in computation offers his goods at a certain lump sum, he is held to that figure, *Tatum* v. *Coast Lumber Co.* (1909) 16 Ida. 471, 101 Pac. 957; *Griffin* v. *O'Neill* (1892) 48 Kan. 117, 29 Pac. 143, unless the vendee knew or should have known of the error when he accepted. *Adkins & Co.* v. *Campbell* (22 Del. 1906) 6 Penn. 96, 64 Atl. 628. But where the vendor has performed and the mistake is merely in the computation of the total due under the agreement, he may recover the unpaid balance. *Union Electric Light Co.* v. *Surgical Supply Co.* (1907) 122 Mo. App. 631, 99 S. W. 804; *Alleghany County* v. *Thoma* (1906) 31 Pa. Super. Ct. 102. In the principal case, since the price per pound was evidently agreed upon and the vendee should have known of the mistake in computation, the vendor can recover the balance of the correct contract price. The defendant contracted to pay for fifty bales at a certain price per pound and is bound to do so. *Cf. Union L. Co.* v. *J. W. Schonten & Co.* (1919) 25 Cal. App. 80, 142 Pac. 910.

SPECIFIC PERFORMANCE—WANT OF MUTUALTY—NEW YORK RULE.—A landlord orally agreed with his tenants that if they should make certain extensive improvements in the property, he would give them an option to extend the lease for five years, and would reduce the agreement to writing. The tenants made the improvements, and now bring a bill to compel the landlord to execute the written agreement. *Held,* the tenants are entitled to specific performance. *Stone* v. 434 *Broadway Corp.* (Sup. Ct. Special Term, 1920) 184 N. Y. Supp. 116.

Specific performance of affirmative obligations is properly refused where the court is unable to enforce complete performance of the contract. *Wakeham* v. *Barker* (1889) 82 Cal. 46, 22 Pac. 1131 (personal service); *Flight* v. *Bolland* (1828) 4 Russell 299 (infancy); (1917) 17 COLUMBIA LAW REV. 549. The defendant should not be compelled to perform where he is left without remedy or with only an action at law, in case of breach by the plaintiff. (1903) 3 COLUMBIA LAW REV. 1; (1916) 16 COLUMBIA LAW REV. 442, 445. The defect in the plaintiff's bill may be termed "want of mutuality of performance." The New York courts have extended this doctrine to cases where the court has the power to compel complete performance, but the defendant could not have filed a bill to compel the plaintiff to perform. 328 *East 26th Street Realty Co.* v. *Kahn* (Sup. Ct. 1920) 184 N. Y. Supp. 95; *Schuyler* v. *Kirk-Brown Realty Co.* (1920) 184 N. Y. Supp. 95; *Wadick* v. *Mace* (1908) 191 N. Y. 1, 83 N. E. 571. The alleged defect here may be termed "want of mutuality of obligations." The courts failed to realize that the plaintiff by coming into court has waived his immunity, so that the court may now compel him to perform. In the principal case, however, the plaintiff has already performed, and even in New York this is held to entitle him to specific performance. *Brune* v. *Von Lehn* (1920) 112 Misc. 342, 183 N. Y. Supp. 360; *McKinley* v. *Hessen* (1911) 202 N. Y. 24, 95 N. E. 32. The performance must be substantial, and in direct execution of the agreement. See *McKinley* v. *Hessen, supra; Wheeler* v. *Reynolds* (1876) 66 N. Y. 227, 231. The courts do not discuss mutuality, but base their decision upon the ground that where the defendant has stood by and permitted the plaintiff to perform, it would be inequitable to allow him to avoid performance on his own part. See *Woolley* v. *Stewart* (1918) 222 N. Y. 347, 351, 118 N. E. 847, 848. The New York courts are correct in granting specific performance where the plain-

tiff has performed. However, no principle supports them in refusing it when the plaintiff, though not originally bound, has submitted himself to the jurisditcion of the court, and can now be compelled to perform.

TRADE UNIONS—PICKETING—INTIMIDATION.—The defendants, white workers for the plaintiff company, struck and picketed the plaintiff's mill. As a result the negro non-striking employees remained away from work until the pickets were withdrawn pursuant to an injunction issued on the ground of intimidation of the negroes by the strikers. The controlling evidence consisted of affidavits by the negroes "showing some threats and acts of violence by the strikers." These statements were subsequently recanted at a meeting of the strikers. In his finding of intimidation, the judge below intimated that the acts of the pickets would not have put white workmen in fear. The defendants appealed. *Held,* appeal dismissed. *King et al.* v. *Weiss &Lesh Mfg. Co.* (C. C. A. 1920) 266 Fed. 257.

On the ground that picketing necessarily implied violence some courts considered all picketing unlawful. *Pierce* v. *Stablemen's Union* (1909) 156 Cal. 70, 103 Pac. 324; *Beck* v. *Railway Teamsters Union* (1898) 118 Mich. 497, 77 N. W. 13. Now the general rule is that peaceable picketing for the purpose of persuasion or entreaty, is not unlawful. *Karges Furniture Co.* v. *Amalgamated Woodworkers Union* (1905) 165 Ind. 421, 7 5N. E. 877; see *Jones* v. *Van Winkle Machine Works* (1908) 131 Ga. 336, 62 S. E. 236; *Rogers* v. *Evarts* (1891) 17 N. Y. Supp. 264. However, when the picketing operates on the fears of the non-strikers rather than on their judgment, it is unlawful intimidation. *Local Union No.* 313 v. *Stathakis* (1918) 135 Ark. 86, 205 S .W. 450; *Atchison, etc. Ry.* v. *Gee* (C. C. 1905) 139 Fed. 582. "Duress, not persuasion, should be restrained and punished." See *Iron Moulders Union* v. *Allis-Chalmers Co.* (1908) 166 Fed. 45, 51. Generally courts have been careful to point out that picketing is intimidating only when there has been actual violence or a display of force inspiring an apprehension of danger such as the massing of large numbers of strikers, the calling of opprobrious names, threatening gestures, and the like. *American Steel & Wire Co.* v. *Wire Drawers' Union* (C. C. 1898) 90 Fed. 608; see *Michaels* v. *Hillman* (1920) 112 Misc. 395, 183 N. Y. Supp. 195. But an injunction will issue even if the pickets' acts, speech, and numbers would not intimidate men of ordinary courage and determination, for the weaker and more timid workers should also be able to come and go without mental disturbance. See *Union Pac. R. R.* v. *Ruef* (C. C. 1902) 120 Fed. 102; *Atchison, etc. Ry.* v. *Gee, supra.* Conceding that negroes in this locality might more easily be intimidated than white men, the evidence of their being subjected in the instant case to that form of intimidation which is a basis for injunctive relief seems slender, especially since they outnumbered the strikers more than seven to one. See *People* v. *Wilzig* (1886) 4 N. Y. Cr. R. 403, 414; *American Steel & Wire Co.* v. *Wire Drawers' Union, supra.* Notwithstanding the fact that Section 20 of the Clayton Act, (1914) 38 Stat. 730, 2 U. S. Comp. Stat. (1916) §1243d, applicable to this case, permits peaceable picketing, the court seemed to think that *merely because* the negroes stayed away owing to the presence of the pickets, and returned after they were withdrawn, therefore the picketing was intimidating. This amountts to saying that peacable picketing is unlawful—a doctrine which nullifies the Clayton Act, and is against the weight of modern authority.

WILLS—APPORTIONMENT—CUMULATIVE PREFERRED SHARES.—The testator bequeathed to his son cumulative preferred stock on which no dividends had been declared during the years 1905 and 1906. In 1907 a dividend was declared sufficient to cover the amount of the omitted dividends. The testator died in 1905 and his executors claim a portion of the dividend declared in 1907 under the Apportionment Act, St.